IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET.
SECOND APPEAL NO.678 OF 2001

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

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Mr.A.V.Chatuphale for the Appellant
Mr.D.S.Sawant for Respondent Nos.1B & 1K.

CORAM: A.S.OKA,J.
DATE : MARCH 3,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Second Appeal is by unsuccessful Plaintiff. The suit was filed simplicitor for perpetual injunction and removal of encroachment.

2. The Appellate Court has recorded a finding that admittedly the original Defendant No.1 against whom the relief was sought by the Appellant was the uncle of the Appellant. The grandfather of the Appellant had undivided share in the property along with original Defendant Nos.2 to 8. Therefore, the father of the Appellant had one-sixteenth share and same was the undivided share of Respondent No.1-Defedant No.1. It is not the case of the Appellant that partition was effected

of the joint family property by metes and bounds. Under the circumstances, the Appellate court held that the Appellant-Plaintiff cannot claim relief of injunction against the co-sharer. The Appellate Court also noted that substantive suit for partition has not been filed by the Appellant-Plaintiff. In the circumstances, the Appellate Court has allowed the Appeal and dismissed the suit filed by the Appellant-Plaintiff only on the ground that the Appellant cannot seek relief of injunction and possession against the co-sharer without filing substantive suit claiming appropriate reliefs.

3. No substantial question of law arises in the Second Appeal. Second Appeal is dismissed with no order as to costs.

JUDGE.